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16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA
18

19 SEANDEE GAYDEN, an individual, on
20 behalf of herself and on behalf of all
21 persons similarly situated,

22 Plaintiff,

23 v.

24 FEDEX FREIGHT, INC., a Corporation,
25 and DOES 1 through 50, inclusive,

26 Defendants.
27
28

Case No. 2:23-cv-06560-MCS (ASx)

PROTECTIVE ORDER

1 Plaintiff Seandee Gayden (“Plaintiff”) and Defendant FedEx Freight, Inc. (“FedEx
2 Freight”) (together, “parties”), by and through their undersigned attorneys of record,
3 hereby stipulate and agree to the following.

4 **I. PURPOSES AND LIMITATIONS**

5 A. Discovery in this action is likely to involve production of confidential,
6 proprietary, or private information for which special protection from public disclosure
7 and from use for any purpose other than prosecuting this litigation may be warranted.
8 Accordingly, the parties hereby stipulate to and petition the Court to enter the following
9 Stipulated Protective Order. The parties acknowledge that this Order does not confer
10 blanket protections on all disclosures or responses to discovery and that the protection it
11 affords from public disclosure and use extends only to the limited information or items
12 that are entitled to confidential treatment under the applicable legal principles. The
13 parties further acknowledge, as set forth in Section XIII(C), below, that this Stipulated
14 Protective Order does not entitle them to file confidential information under seal; Civil
15 Local Rule 79-5 sets forth the procedures that must be followed and the standards that
16 will be applied when a party seeks permission from the Court to file material under seal.

17 **II. GOOD CAUSE STATEMENT**

18 A. This action is likely to involve valuable commercial, financial, technical
19 and/or proprietary information for which special protection from public disclosure and
20 from use for any purpose other than prosecution of this action is warranted. Such
21 confidential and proprietary materials and information consist of, among other things,
22 confidential business or financial information, information regarding confidential
23 business practices, or other confidential commercial information (including information
24 implicating privacy rights of third parties), information otherwise generally unavailable
25 to the public or FedEx Freight’s competitors, or which may be privileged or otherwise
26 protected from disclosure under state or federal statutes, court rules, case decisions, or
27 common law. Accordingly, to expedite the flow of information, to facilitate the prompt
28 resolution of disputes over confidentiality of discovery materials, to adequately protect

1 information the parties are entitled to keep confidential, to ensure that the parties are
 2 permitted reasonable necessary uses of such material in preparation for and in the
 3 conduct of trial, to address their handling at the end of the litigation, and serve the ends of
 4 justice, a protective order for such information is justified in this matter. It is the intent of
 5 the parties that information will not be designated as confidential for tactical reasons and
 6 that nothing be so designated without a good faith belief that it has been maintained in a
 7 confidential, non-public manner, and there is good cause why it should not be part of the
 8 public record of this case.

9 **III. DEFINITIONS**

10 A. Action: This pending federal law suit.

11 B. Challenging Party: A Party or Non-Party that challenges the designation of
 12 information or items under this Order.

13 C. Class Contact Information: full name, last known telephone number, last
 14 known address, last known e-mail address, position worked and dates of employment of
 15 all California Class members as defined in the complaint filed on May 23, 2023.

16 D. “CONFIDENTIAL” Information or Items: Information (regardless of how it
 17 is generated, stored or maintained) or tangible things that qualify for protection under
 18 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
 19 Statement.

20 E. Counsel: Outside Counsel of Record and House Counsel (as well as their
 21 support staff).

22 F. Designating Party: A Party or Non-Party that designates information or
 23 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

24 G. Disclosure or Discovery Material: All items or information, regardless of
 25 the medium or manner in which it is generated, stored, or maintained (including, among
 26 other things, testimony, transcripts, and tangible things), that are produced or generated in
 27 disclosures or responses to discovery in this matter.
 28

1 H. Expert: A person with specialized knowledge or experience in a matter
 2 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
 3 expert witness or as a consultant in this Action.

4 I. House Counsel: Attorneys who are employees of a party to this Action.
 5 House Counsel does not include Outside Counsel of Record or any other outside counsel.

6 J. Non-Party: Any natural person, partnership, corporation, association, or
 7 other legal entity not named as a Party to this action.

8 K. Outside Counsel of Record: Attorneys who are not employees of a party to
 9 this Action but are retained to represent or advise a party to this Action and have
 10 appeared in this Action on behalf of that party or are affiliated with a law firm which has
 11 appeared on behalf of that party, and includes support staff.

12 L. Party: Any party to this Action, including all of its officers, directors,
 13 employees, consultants, retained experts, and Outside Counsel of Record (and their
 14 support staffs).

15 M. Producing Party: A Party or Non-Party that produces Disclosure or
 16 Discovery Material in this Action.

17 N. Professional Vendors: Persons or entities that provide litigation support
 18 services (e.g., photocopying, videotaping, translating, preparing exhibits or
 19 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
 20 their employees and subcontractors.

21 O. Protected Material: Any Disclosure or Discovery Material that is designated
 22 as "CONFIDENTIAL."

23 P. Receiving Party: A Party that receives Disclosure or Discovery Material
 24 from a Producing Party.

25 **IV. SCOPE**

26 A. The protections conferred by this Stipulation and Order cover not only
 27 Protected Material (as defined above), but also (1) any information copied or extracted
 28 from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected

1 Material; (3) any testimony, conversations, or presentations by Parties or their Counsel
2 that might reveal Protected Material; and (4) Class Contact Information.

3 B. Any use of Protected Material at trial shall be governed by the orders of the
4 trial judge. This Order does not govern the use of Protected Material at trial.

5 **V. DURATION**

6 A. Once a case proceeds to trial, all of the information that was designated as
7 confidential or maintained pursuant to this Protective Order becomes public and will be
8 presumptively available to all members of the public if part of the court record, including
9 the press, unless compelling reasons supported by specific factual findings to proceed
10 otherwise are made to the trial judge in advance of the trial. See Kamakana v. City and
11 County of Honolulu, 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing “good
12 cause” showing for sealing documents produced in discovery from “compelling reasons”
13 standard when merits-related documents are part of court record). Accordingly, the terms
14 of this Protective Order do not extend beyond the commencement of the trial for any
15 material made part of the court record.

16 B. For information not subject to Section V.A, even after final disposition of
17 this litigation, the confidentiality obligations imposed by this Order shall remain in effect
18 until a Designating Party agrees otherwise in writing or a court order otherwise directs.
19 Final disposition shall be deemed to be the later of (1) dismissal of all claims and
20 defenses in this Action, with or without prejudice; and (2) final judgment herein after the
21 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
22 Action, including the time limits for filing any motions or applications for extension of
23 time pursuant to applicable law.

24 **VI. DESIGNATING PROTECTED MATERIAL**

25 A. Exercise of Restraint and Care in Designating Material for Protection

26 1. Each Party or Non-Party that designates information or items for
27 protection under this Order must take care to limit any such designation to specific
28 material that qualifies under the appropriate standards. The Designating Party must

1 designate for protection only those parts of material, documents, items, or oral or written
2 communications that qualify so that other portions of the material, documents, items, or
3 communications for which protection is not warranted are not swept unjustifiably within
4 the ambit of this Order.

5 2. Mass, indiscriminate, or routinized designations are prohibited.
6 Designations that are shown to be clearly unjustified or that have been made for an
7 improper purpose (e.g., to unnecessarily encumber the case development process or to
8 impose unnecessary expenses and burdens on other parties) may expose the Designating
9 Party to sanctions.

10 3. If it comes to a Designating Party's attention that information or items
11 that it designated for protection do not qualify for protection, that Designating Party must
12 promptly notify all other Parties that it is withdrawing the inapplicable designation.

13 B. Manner and Timing of Designations

14 1. Except as otherwise provided in this Order (*see, e.g.*, Section B(2)(b)
15 below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that
16 qualifies for protection under this Order must be clearly so designated before the material
17 is disclosed or produced.

18 2. Designation in conformity with this Order requires the following:
19 a. For information in documentary form (e.g., paper or electronic
20 documents, but excluding transcripts of depositions or other pretrial or trial proceedings),
21 that the Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter
22 "CONFIDENTIAL legend"), to each page that contains protected material. If only a
23 portion or portions of the material on a page qualifies for protection, the Producing Party
24 also must clearly identify the protected portion(s) (e.g., by making appropriate markings
25 in the margins).

26 b. A Party or Non-Party that makes original documents available
27 for inspection need not designate them for protection until after the inspecting Party has
28 indicated which documents it would like copied and produced. During the inspection and

1 before the designation, all of the material made available for inspection shall be deemed
 2 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
 3 copied and produced, the Producing Party must determine which documents, or portions
 4 thereof, qualify for protection under this Order. Then, before producing the specified
 5 documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page
 6 that contains Protected Material. If only a portion or portions of the material on a page
 7 qualifies for protection, the Producing Party also must clearly identify the protected
 8 portion(s) (e.g., by making appropriate markings in the margins).

9 c. For testimony given in depositions, that the Designating Party
 10 identify the Disclosure or Discovery Material on the record, before the close of the
 11 deposition all protected testimony.

12 d. For information produced in form other than document and for
 13 any other tangible items, that the Producing Party affix in a prominent place on the
 14 exterior of the container or containers in which the information is stored the legend
 15 “CONFIDENTIAL.” If only a portion or portions of the information warrants protection,
 16 the Producing Party, to the extent practicable, shall identify the protected portion(s).

17 C. Inadvertent Failure to Designate

18 1. If corrected within 30 days, an inadvertent failure to designate
 19 qualified information or items does not waive the Designating Party’s right to secure
 20 protection under this Order for such material. Upon timely correction of a designation,
 21 the Receiving Party must make reasonable efforts to assure that the material is treated in
 22 accordance with the provisions of this Order.

23 VII. CHALLENGING CONFIDENTIALITY DESIGNATIONS

24 A. Timing of Challenges

25 1. Any party or Non-Party may challenge a designation of
 26 confidentiality at any time that is consistent with the Court’s Scheduling Order.

27 B. Meet and Confer

1 1. The Challenging Party shall initiate the dispute resolution process
2 under Local Rule 37.1 et seq.

3 C. The burden of persuasion in any such challenge proceeding shall be on the
4 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
5 to harass or impose unnecessary expenses and burdens on other parties) may expose the
6 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
7 the confidentiality designation, all parties shall continue to afford the material in question
8 the level of protection to which it is entitled under the Producing Party's designation until
9 the Court rules on the challenge.

10 **VIII. ACCESS TO AND USE OF PROTECTED MATERIAL**

11 A. Basic Principles

12 1. **A Receiving Party may use Protected Material that is disclosed or**
13 **produced by another Party or by a Non-Party in connection with this Action only**
14 **for prosecuting, defending, or attempting to settle this Action.** Such Protected
15 Material may be disclosed only to the categories of persons and under the conditions
16 described in this Order. When the Action has been terminated, a Receiving Party must
17 comply with the provisions of Section XIV below.

18 2. Protected Material must be stored and maintained by a Receiving
19 Party at a location and in a secure manner that ensures that access is limited to the
20 persons authorized under this Order.

21 B. Disclosure of "CONFIDENTIAL" Information or Items

22 1. Unless otherwise ordered by the Court or permitted in writing by the
23 Designating Party, a Receiving Party may disclose any information or item designated
24 "CONFIDENTIAL" only to:

25 a. The Receiving Party's Outside Counsel of Record in this
26 Action, as well as employees of said Outside Counsel of Record to whom it is reasonably
27 necessary to disclose the information for this Action;
28

b. The officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;

c. Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

d. The Court and its personnel;

e. Court reporters and their staff;

f. Professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to be Bound” attached as Exhibit A hereto;

g. The author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

h. During their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (i) the deposing party requests that the witness sign the “Acknowledgment and Agreement to Be Bound;” and (ii) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound,” unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

i. Any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

IX. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

1 A. If a Party is served with a subpoena or a court order issued in other litigation
2 that compels disclosure of any information or items designated in this Action as
3 “CONFIDENTIAL,” that Party must:

4 1. Promptly notify in writing the Designating Party. Such notification
5 shall include a copy of the subpoena or court order;

6 2. Promptly notify in writing the party who caused the subpoena or order
7 to issue in the other litigation that some or all of the material covered by the subpoena or
8 order is subject to this Protective Order. Such notification shall include a copy of this
9 Stipulated Protective Order; and

10 3. Cooperate with respect to all reasonable procedures sought to be
11 pursued by the Designating Party whose Protected Material may be affected.

12 B. If the Designating Party timely seeks a protective order, the Party served
13 with the subpoena or court order shall not produce any information designated in this
14 action as “CONFIDENTIAL” before a determination by the Court from which the
15 subpoena or order issued, unless the Party has obtained the Designating Party’s
16 permission. The Designating Party shall bear the burden and expense of seeking
17 protection in that court of its confidential material and nothing in these provisions should
18 be construed as authorizing or encouraging a Receiving Party in this Action to disobey a
19 lawful directive from another court.

20 **X. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
21 **PRODUCED IN THIS LITIGATION**

22 A. The terms of this Order are applicable to information produced by a Non-
23 Party in this Action and designated as “CONFIDENTIAL.” Such information produced
24 by Non-Parties in connection with this litigation is protected by the remedies and relief
25 provided by this Order. Nothing in these provisions should be construed as prohibiting a
26 Non-Party from seeking additional protections.

27 B. In the event that a Party is required, by a valid discovery request, to produce
28 a Non-Party’s confidential information in its possession, and the Party is subject to an

1 agreement with the Non-Party not to produce the Non-Party's confidential information,
2 then the Party shall:

3 1. Promptly notify in writing the Requesting Party and the Non-Party
4 that some or all of the information requested is subject to a confidentiality agreement
5 with a Non-Party;

6 2. Promptly provide the Non-Party with a copy of the Stipulated
7 Protective Order in this Action, the relevant discovery request(s), and a reasonably
8 specific description of the information requested; and

9 3. Make the information requested available for inspection by the Non-
10 Party, if requested.

11 C. If the Non-Party fails to seek a protective order from this court within 14
12 days of receiving the notice and accompanying information, the Receiving Party may
13 produce the Non-Party's confidential information responsive to the discovery request. If
14 the Non-Party timely seeks a protective order, the Receiving Party shall not produce any
15 information in its possession or control that is subject to the confidentiality agreement
16 with the Non-Party before a determination by the court. Absent a court order to the
17 contrary, the Non-Party shall bear the burden and expense of seeking protection in this
18 court of its Protected Material.

19 **XI. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

20 A. If a Receiving Party learns that, by inadvertence or otherwise, it has
21 disclosed Protected Material to any person or in any circumstance not authorized under
22 this Stipulated Protective Order, the Receiving Party must immediately (1) notify in
23 writing the Designating Party of the unauthorized disclosures, (2) use its best efforts to
24 retrieve all unauthorized copies of the Protected Material, (3) inform the person or
25 persons to whom unauthorized disclosures were made of all the terms of this Order, and
26 (4) request such person or persons to execute the "Acknowledgment and Agreement to be
27 Bound" that is attached hereto as Exhibit A.

28 ///

XII. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

A. When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the Stipulated Protective Order submitted to the Court.

XIII. MISCELLANEOUS

A. Right to Further Relief

1. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

B. Right to Assert Other Objections

1. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

2. By entering into this Protective Order, Defendant is not conceding the appropriate scope or size of the class in this matter or agreeing to produce Class Contact Information with respect to all California Class members as defined in the Operative Complaint. Defendant reserves the right to limit the production of Class Contact Information to only those individuals whom Defendant believes fall within the proper scope of the class in this action.

C. Filing Protected Material

1 1. A Party that seeks to file under seal any Protected Material must
 2 comply with Civil Local Rule 79-5. Protected Material may only be filed under seal
 3 pursuant to a court order authorizing the sealing of the specific Protected Material at
 4 issue. If a Party's request to file Protected Material under seal is denied by the Court,
 5 then the Receiving Party may file the information in the public record unless otherwise
 6 instructed by the Court.

7 **XIV. FINAL DISPOSITION**

8 A. After the final disposition of this Action, as defined in Section V, within
 9 sixty (60) days of a written request by the Designating Party, each Receiving Party must
 10 return all Protected Material to the Producing Party or destroy such material. As used in
 11 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
 12 summaries, and any other format reproducing or capturing any of the Protected Material.
 13 Whether the Protected Material is returned or destroyed, the Receiving Party must submit
 14 a written certification to the Producing Party (and, if not the same person or entity, to the
 15 Designating Party) by the 60 day deadline that (1) all the Protected Material that was
 16 returned or destroyed and (2) affirms that the Receiving Party has not retained any
 17 copies, abstracts, compilations, summaries or any other format reproducing or capturing
 18 any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
 19 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
 20 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
 21 reports, attorney work product, and consultant and expert work product, even if such
 22 materials contain Protected Material. Any such archival copies that contain or constitute
 23 Protected Material remain subject to this Protective Order as set forth in Section V.

24 B. Any violation of this Order may be punished by any and all appropriate
 25 measures including, without limitation, contempt proceedings and/or monetary sanctions.

26 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

27 /

28 /

1 DATED: December 1, 2023

FEDEX FREIGHT, INC.

2
3 By: /s/ Sandra Isom

4 Sandra Isom

5
6 *Attorneys for Defendant FedEx Freight, Inc.*

1 DATED: December 1, 2023

LITTLER MENDELSON P.C.

2
3
4 By: /s/ Keith Jacoby

5 Keith A. Jacoby
6 Shahram Samie

7 *Attorneys for Defendant FedEx Freight*

8 DATED: December 1, 2023

BLUMENTHAL NORDREHAUG BHOWMIK
9 DE BLOUW, LLP

10
11
12 By: /s/ Christine T. LeVu

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Attorneys for Plaintiff and the Proposed Class

21 *Pursuant to L.R. 5-4.3.4(a)(2)(i), the undersigned attorney hereby attests that all
22 other signatories listed, and on whose behalf the filing is submitted, concur in the filing's
23 content and have authorized the filing.

24 DATED: December 1, 2023

LITTLER MENDELSON P.C.

25
26 By: /s/ Keith Jacoby

27 Keith A. Jacoby
28 *Attorneys for Defendant FedEx Freight*

ORDER

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: December 4, 2023

/ s / Sagar

Honorable Alka Sagar
United States Magistrate Judge

EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of _____
 [print or type full address], declare under penalty of perjury that I have read in its entirety
 and understand the Stipulated Protective Order that was issue by the United States
 District Court for the Central District of California on [DATE] in the case of *Seandee*
Gayden v. FedEx Freight Inc, Case No. 2:23-cv-06560-MCS (ASx). I agree to comply
 with and to be bound by all the terms of this Stipulated Protective Order and I
 understand and acknowledge that failure to so comply could expose me to sanctions and
 punishment in the nature of contempt. I solemnly promise that I will not disclose in any
 manner any information or item that is subject to this Stipulated Protective Order to any
 person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for
 the Central District of California for the purpose of enforcing the terms of this Stipulated
 Protective Order, even if such enforcement proceedings occur after termination of this
 action. I hereby appoint _____ [print or type full name] of _____
 _____ [print or type full address and telephone number] as my California
 agent for service of process in connection with this action or any proceedings related to
 enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____